

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

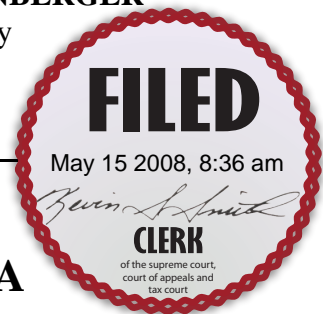
ATTORNEY FOR APPELLANT:

KATHRYN D. SCHMIDT
Burke Costanza & Cuppy LLP
Merrillville, Indiana

ATTORNEYS FOR APPELLEE:

MARILYN S. MEIGHEN
Meighen & Associates PC
Carmel, Indiana

GWENN R. RINKENBERGER
Porter County Attorney
Valparaiso, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

JACK GRAY TRANSPORT, INC.,

Appellant-Petitioner,

VS.

PORTER COUNTY ASSESSOR.

Appellee-Respondent.

)
)
)
)
)
)
)
)
)

No. 45A03-0709-CV-460

APPEAL FROM THE LAKE SUPERIOR COURT

The Honorable Jeffrey J. Dwyan, Judge

Cause No. 45D11-0706-CT-90

May 15, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-petitioner Jack Gray Transport, Inc. (Jack Gray) appeals the trial court's dismissal of its action for mandate filed against appellee-respondent Porter County Assessor (Assessor) for lack of subject matter jurisdiction. Specifically, Jack Gray contends that the trial court erred in determining that the Tax Court has exclusive jurisdiction over this case because it involves property tax exemptions. Concluding that the trial court properly granted the motion to dismiss, we affirm.

FACTS

On August 1, 1989, Jack Gray entered into a lease agreement with the Indiana Port Commission (PORT). Jack Gray was to pay ground rent for the use of 3.78 acres of land and rent for a warehouse in an amount equal to its construction costs amortized over a period of twenty years at eight percent interest.

By March 1, 1990, Jack Gray began occupying and using the warehouse; therefore, it was subject to assessment. Although Jack Gray did not own any improvements on the property, the Portage Township Assessor assessed the value of the warehouse and paying for the 1990 tax year at \$393,870. The taxes on the improvements were assessed to Jack Gray, but the land was not taxed.

On November 19, 1991, Jack Gray filed a petition for a review of the assessment, which the Porter County Property Tax Assessment Board of Appeals subsequently denied. Thereafter, Jack Gray filed for a subsequent review on October 19, 1992. Although the State Board of Tax Commissioners (Board) conducted a hearing on January 11, 1993, it did not issue its final determination with findings until September 30, 2002.

In its decision, the Board—which had become the Indiana Board of Tax Review (Review Board)—determined that the definition of land included the improvements thereon. Therefore, the improvements were exempted from the assessment. As a result, the Review Board found that Jack Gray was exempt from property taxes for tax years 1990 through the then-present date. The Review Board relied on Indiana Code section 8-10-1-27(c), which states, “[n]withstanding any other statute, a lessee’s leasehold estate in land that is part of a port and that is owned by the state or the commission is exempt from property taxation. However, an exemption under this subsection is not available for land not located at a port.” Appellant’s App. p. 72-73.

The Assessor filed its verified petition for judicial review in the Indiana Tax Court on November 14, 2002. After briefing, a hearing was set for October 17, 2003. The Tax Court took the matter under advisement, and on September 22, 2006—nearly three years later—the Tax Court issued an unpublished decision reversing the determination with regard to the 1990 tax year, reasoning that Indiana Code section 8-10-1-27(c) did not become effective until January 1, 1999.

Thereafter, Jack Gray petitioned the Tax Court for rehearing based upon the Portage Township Assessor having taxed the value of the improvements to it instead of the leasehold estate that it held. The Tax Court remanded the cause back to the Review Board regarding the issue of whether the assessed value assigned to the improvements leased to Jack Gray was correct. On March 12, 2007, the Review Board determined that Jack Gray failed to make a prima facie showing that the assessed value assigned by the township assessor to the improvements for the tax year 1990 was incorrect. Therefore,

the Review Board affirmed the assessed value that had been assigned. Jack Gray paid the property tax at issue for the tax year 1990 in the sum of \$8,435.14. Thereafter, on March 27, 2007, Jack Gray filed an “Action for Mandate” against the Assessor in the trial court. In particular, it sought to require the Assessor to apply the exemption and report it to the Auditor to remove the taxes from the leasehold at the port.

In response, the Assessor filed a motion to dismiss the action on May 17, 2007, pursuant to Indiana Trial Rule 12(B)(1), asserting that the trial court lacked subject matter jurisdiction because the case arose under the tax laws of the State. The Assessor argued that the Tax Court has exclusive, statewide jurisdiction over tax-related matters, and Jack Gray is not permitted to bypass the administrative process and the Tax Court by filing a mandate action in the trial court. Jack Gray then filed a motion for summary judgment on June 19, 2007, claiming that it was entitled to judgment as a matter of law “as the property is exempt from taxation from 1991 to present.” Appellant’s App. p. 175.

On September 17, 2007, the trial court dismissed Jack Gray’s action for mandate, observing that:

The Indiana Tax Court has exclusive jurisdiction over any case that arises under the tax laws of the state. A case arises under the tax laws if any Indiana tax statute creates the right of action or the case principally involves the collection of a tax or defenses to that collection. State v. Sproles, 672 N.E.2d 1353, 1357 (Ind. 1996).

A party seeking judicial review must exhaust all administrative remedies. . . . Failure to exhaust administrative remedies is a defect in subject matter jurisdiction. . . .

Jack Gray . . . has asked this Court to declare the subject property exempt from property taxation from 1992 to the present, and to declare that Jack Gray . . . is not liable for property taxes on that property for the same

period. A party cannot circumvent the requirement that it exhaust its administrative remedies, to enable the tax court to acquire exclusive jurisdiction, by filing an action in a trial court such as Jack Gray Transport, Inc. has done here. See Sproles, 672 N.E.2d at 1358-62 (describing the issue as “whether the administrative process and Tax court can be bypassed altogether by filing an action in a circuit court” and holding that this attempt to circumvent the administrative process was not allowed). This court lacks subject matter jurisdiction.

Appellant’s App. p. 7-8. Jack Gray now appeals.

DISCUSSION AND DECISION

We initially observe that when reviewing the grant or denial of a motion to dismiss, we first determine whether the trial court resolved disputed facts or conducted an evidentiary hearing or ruled on a paper record. GKN Co. v. Magness, 744 N.E.2d 397, 401 (Ind. 2001). If the facts are undisputed, the question of subject matter jurisdiction is purely one of law and no deference is afforded the trial court’s conclusion. Id. We independently evaluate the issues that are deemed to be questions of law. Id. Therefore, we review de novo the trial court’s ruling on a motion to dismiss under Trial Rule 12(B)(1). In this case, the facts are undisputed and the trial court ruled on a paper record. Therefore, we will review the matter de novo.

Proceeding to Jack Gray’s contention that the trial court erred in granting the Assessor’s motion to dismiss, we note that subject matter jurisdiction is the power of the court to hear and decide a particular class of cases. State Bd. of Tax Commr’s v. Ispat Inland, Inc., 784 N.E.2d 477, 480-81 (Ind. 2003). If a court is without subject matter jurisdiction, any judgment it renders is void. Id. at 481. In general, a party seeking

judicial review must exhaust all administrative remedies. State v. Lake Sup. Ct., 820 N.E.2d 1240, 1246 (Ind. 2005).

Next, we note that the Lake Superior Court is a court of general jurisdiction. Lake Superior Courts have the same jurisdiction as the Lake Circuit Court in all civil and probate cases. Ind. Code § 33-33-45-6(a)(1). Jurisdiction of these courts extends to all civil cases “except where exclusive jurisdiction is conferred by law upon other courts of the same territorial jurisdiction.” Ind. Code § 33-28-1-2(a).

In an effort to channel tax disputes to a specialized tribunal, the Indiana Legislature created the Indiana Tax Court in 1986. State v. Sproles, 672 N.E.2d 1353, 1356 (Ind. 1996). Thus, in tax-related litigation, exclusive subject matter jurisdiction is conferred by statute to that court. I.C. § 33-26-3-1. Also, as set forth under Indiana Tax Court Rule 13, “the tax court has exclusive statewide jurisdiction over all original tax appeals, and venue of all original tax appeals shall lie only in the tax court.” Moreover, the Sproles Court observed that the legislature intended that all challenges to the tax laws be tried in the Tax court regardless of the legal theory relied upon. 672 N.E.2d at 1357. A case “arises” under the tax laws if: (1) an Indiana statute creates the right of action, or (2) the case principally involves the collection of a tax or defenses to that collection. Id.

In this case, the question that Jack Gray presents “arises under” the tax laws because the heart of the case involves the issue of whether property located in Indiana is exempt from taxation. Even so, Jack Gray asked the trial court—and now this court—to declare certain property exempt from taxation. Appellant’s App. p. 216-17. Indiana Code section 6-1.1-11-3(a) provides that a property owner must file an application for

exemption with the county assessor every year. The application applies only for the property taxes imposed for the year for which the application is filed. Id. And if the property owner does not comply with the statutory procedures for obtaining an exemption, he waives the exemption. Ind. Code § 6-1.1-11-7. The determination may be appealed to the Review Board, and a dissatisfied party may file a petition for judicial review with the Tax Court. I.C. § 6-1.1-15-5(b).

As noted above, the second prerequisite to Tax Court jurisdiction is that there is a “final determination” made by a relevant agency. I.C. § 33-26-3-1. A final determination for the purpose of Tax Court jurisdiction is an order that determines the rights of, or imposes obligation on, the parties as a consummation of the administrative process. Ispat Inland, 784 N.E.2d at 481. The “final determination” requirement means that a taxpayer wishing to contest a tax must first exhaust administrative remedies before judicial review may be initiated. Lake Sup. Ct., 820 N.E.2d at 1246. Indeed, individuals who challenge tax-related matters cannot bypass the administrative process and the Tax Court by filing an action in a trial court. See Wayne Twp. v. Ind. Dep’t of Local Gov’t. Fin., 865 N.E.2d 625, 628-29 (Ind. Ct. App. 2007) (holding that an action challenging a county auditor’s calculation of a township’s share of the county option income tax did not belong in a court of general jurisdiction due to the Tax Court’s exclusive jurisdiction), reh’g granted and modified, 869 N.E.2d 531, 532-34 (Ind. Ct. App. 2007) (observing that this court’s remand to the tax court mandating it to consider the merits of the case was altered because of this court’s lack of authority to decide if there was a final

determination and the case was remanded to the trial court with instructions to dismiss the case due to lack of subject matter jurisdiction), trans. denied.

In this case, Jack Gray did not pursue any administrative remedies for the tax years after the tax case in 1990. Appellant's App. p. 168-69, 172. Rather, it waited until it lost its dispute for the 1990 tax year and then filed the instant action in the trial court. In essence, Jack Gray is asserting that it exhausted the administrative remedies once for the 1990 tax year and, as a result, does not have to do anything in subsequent years other than to request the trial court to enforce the tax laws. Jack Gray may not prevail on this argument because of its improper bypass of the administrative process. As a result, we conclude that the trial court properly granted the Assessor's motion to dismiss the action for mandate.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.